MICHIGAN LAW REVIEW

PUBLISHED MONTHLY DURING THE ACADEMIC YEAR, EXCLUSIVE OF OCTOBER, BY THE

LAW FACULTY OF THE UNIVERSITY OF MICHIGAN

SUBSCRIPTION PRICE $2.50 PER YEAR. **35 CENTS PER NUMBER**

NOTE AND COMMENT

STATE LEGISLATION EXTENDING TO NAVIGABLE WATERS.—In *Southern Pacific Company* v. *Jensen*, 37 Sup. Ct. —, decided May 21, 1917, the Supreme Court announces a decision in some respects of far reaching importance. It was held therein, Mr. Justice HOLMES dissenting, that the WORKMEN'S COMPENSATION ACT of the State of New York did not support an award to the widow and children of a workman killed on board a ship of the Company while at the pier in New York City. Clearly the terms of the New York act covered the case, unless the fact that the accident occurred on navigable waters of the United States had a controlling effect to the contrary.

If the death was tortious, there can be no doubt under *Atlantic Transport Co.* v. *Imbrovek*, 234 U. S. 52, 59, that it was a maritime tort and within admiralty jurisdiction.

By ART. III, §2 of the Constitution, the judicial power of the United States is extended "To all cases of admiralty and maritime jurisdiction," and this has been held to confer paramount power upon Congress to fix and determine the maritime law which shall prevail throughout the country. *Butler* v. *Steamship Co.*, 130 U. S. 527, *In re Garnett*, 141 U. S. 1. In the latter case the court said: "As the Constitution extends the judicial power of the United States to 'all cases of admiralty and maritime jurisdiction,' and as this juris-

diction is held to be exclusive, the power of legislation on the same subject must necessarily be in the national legislature, and not in the State legislatures."

It is well established, however, that within certain limits, not clearly defined, State legislation in a sense affecting the general maritime law, may be upheld. *The Lottawanna,* 21 Wall. 558 (lien for repairs upon vessel in home port); *The J. E. Rumbell,* 148 U. S. 1 (same); *Cooley* v. *Board of Wardens,* 12 How. 299 (pilotage fees fixed); *Ex parte McNeil,* 13 Wall. 236 (same). In *Sherlock* v. *Alling,* 93 U. S. 99, a death act of the State of Indiana was held to give a cause of action for negligent injury suffered on the Ohio River; and in *The Hamilton,* 207 U. S. 398, and *La Bourgogne,* 210 U. S. 95, the laws of Delaware and France, respectively, giving a cause of action for negligently causing death were recognized and enforced in admiralty cases, the deaths having been caused on the high seas. Under the general maritime law there could have been no cause of action for causing death, but the court enforced rights created by the law of Delaware and France. Apparently these laws were not given the effect of changing the maritime law—that could be done only by Congress—but as creating rights under the state municipal law which courts of admiralty would enforce, just as one State may give recognition to and enforce rights created by the law of another State or country.

On the other hand, State law cannot authorize proceedings *in rem* as in admiralty. *The Moses Taylor,* 4 Wall. 411; *The Glide,* 167 U. S. 606. Nor will a State statute creating liens for materials used in repairing a foreign ship under circumstances not sufficient to create a lien under maritime law be upheld. *The Roanoke,* 189 U. S. 185. And where a certain act would give rise to a liability under maritime law, a rule of the law of the State within the territory of which the liability was incurred denying recovery will be disregarded. *Workman* v. *Mayor,* 179 U. S. 557.

The COMPENSATION ACT in the principal case, under the police powers of the State, created a liability for accidental injury not recognized by maritime law, just as the law of Delaware considered and upheld in *The Hamilton,* supra, created a liability for negligently causing death not recognized by maritime law, and if the court was right in the earlier case in giving effect in a court of admiralty to such right under the law of Delaware, it would seem that in the principal case like force should have been given to the New York statute. It is interesting that Mr. Justice HOLMES, who wrote the unanimous opinion of the court in *The Hamilton,* vigorously dissented in the principal case. A resulting lack of uniformity seems to have been the main reason for the majority of the court refusing to recognize the liability created by the statute. It is said that "If New York can subject foreign ships coming into her ports to such obligations as those imposed by her compensation statute, other States may do likewise. The necessary consequence would be destruction of the very uniformity in respect to maritime matters which the Constitution was designed to establish, and freedom of naviga-

tion between the States and with foreign countries would be seriously hampered and impeded". But how about the lack of uniformity under *Sherlock* v. *Alling,* supra, and *The Hamilton,* supra?

The court in determining whether State law shall stand as against or along with the maritime law, applies the same tests that are applied when the question is between State action and the national control over interstate commerce. In this connection it is interesting to refer to *The New York Central Railroad Company* v. *Winfield,* decided the same day, where it was held, Mr. Justice BRANDEIS and Mr. Justice CLARKE dissenting, that the COMPENSATION ACT of New York did not apply to non-tortious injuries to employees of the company, although the FEDERAL EMPLOYERS' LIABILITY ACT covers only negligent injuries. It apparently was conceded by all that but for the Federal Act the State statute would apply to employees engaged in interstate commerce as well as to those not so engaged. Congress, however, having acted, the State action was displaced. R.W.A.

RELETTING ON ABANDONMENT BY TENANT AS SURRENDER BY OPERATION OF LAW.—Among the very many difficult problems arising under the STATUTE OF FRAUDS not the least troublesome has been that of surrender of estates by "operation of law." The Statute (29 Car. II, c.3,§3,) provided that "no leases * * * shall * * * be assigned, granted, or surrendered, unless it be by deed or note in writing, * * * or by act and operation of law." Under a number of varying situations it has been held that a surrender by operation of law had been accomplished. See 2 TIFFANY, LANDLORD AND TENANT, §190. In *Lyon* v. *Reed,* 13 M. & W. 285, Baron PARKE, after referring to a number of such situations, said: "It is needless to multiply examples; all the old cases will be found to depend on the principle to which we have adverted, namely, an act done by or to the owner of a particular estate, the validity of which he is estopped from disputing, and which could not have been done if the particular estate continued to exist. The law there says, that the act itself amounts to a surrender. In such case it will be observed there can be no question of intention. It takes place independently, and even in spite of intention."

Perhaps the most common situation giving rise to a claim of surrender by operation of law is the re-letting of the premises to a new tenant after a lessee has abandoned them before the end of his term, notice of intention to continue to look to the original lessee to make up deficiencies, if any, sometimes being given and sometimes not. Whatever may be said as to the proper holding on sound legal reasoning, it is certainly true that the courts are holding that such re-letting does not necessarily bring about a surrender by operation of law; particularly is this true where the lessor has given notice to the first lessee that the new lease is made on his account, or without prejudice to any claims against him on the original lease. *Rucker* v. *Mason* (Okla. 1916), 161 Pac. 195, 15 MICH. L. REV. 357; *Hickman* v. *Breadford* (Iowa 1917), 162 N. W. 53.

If such surrenders are, as said by Baron PARKE, founded upon estoppels and are wholly independent of intention, it would seem that cases of the above